IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

H.C.P. Nos.1009 and 1018 of 2006

HCP.1009 of 2006

V.P.Kalairajan ... Petitioner

vs.

1. The Director General of Police,
   Kamarajar Salai,
   Chennai - 600 004.

2. The Commissioner of Police,
   Greater Chennai,
   Egmore, Chennai - 600 008.

3. The Inspector of Police,
   J4-Kotturpuram Police Station,
   Chennai.

4. The Inspector of Police,
   R5-Choolaimedu Police Station,
   Chennai.

5. The Inspector of Police,
   R2-Kodambakkam Police Station,
   Chennai.

6. The Inspector of Police,
   E2-Royapettah Police Station,
   Chennai.

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7. The Inspector of Police,
   R1-Mambalam Police Station,
   Chennai.

8. The Inspector of Police,
   R4-Pondy Bazaar Police Station,
   Chennai.

9. The Inspector of Police,
   R8-Vadapalani Police Station,
   Chennai.

10. The Inspector of Police,
   E4-Abiramapuram Police Station,
   Chennai.

11. The Inspector of Police,
   R6-Kumaran Nagar Police Station,
   Chennai.

12. The Inspector of Police,
   J6-Thiruvanmiyur Police Station,
   Chennai.

13. The Inspector of Police,
   J1-Saidapet Police Station,Chennai.

14. The Inspector of Police,
   E1-Mylapore Police Station,
   Chennai.

15. The Inspector of Police,
   R3-Ashok Nagar Police Station,
   Chennai.

16. The Inspector of Police,
   E3-Teynampet Police Station,
   Chennai.

17. The Inspector of Police,
   J3-Guindy Police Station,
   Chennai. ... Respondents

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HCP No.1018 of 2006

Santha ... Petitioenr

vs.

Inspector of Police,
F2 Chintadripet Police Station,
Chennai. ... Respondent

Petitions under Article 226 of the Constitution of India for the issuance of writ of habeas corpus as stated therein.

For Petitioners : Mr.S.Jayakumar
For Respondents/ State : Mr.M.Babu Muthu Meeran, Addl. Public Prosecutor.

COMMON ORDER

(Order of the Court was made by P.SATHASIVAM, J.)

One V.P.Kalairajan, District Secretary for South Chennai of All Indian Anna Dravida Munnetra Kazhagam, has filed HCP No.1009 of 2006 under Article 226 of the Constitution of India, for a direction to the respondents to set at liberty the detenus, viz., Sivaprakash, Arumugam, Gavaskar, Gopu Selvam, Ramamurthy, Kumar, Vembuli, Kutty @ Gajendran, N.V.Selvam, Elumalai, Nithya, Ravi, Sakthivel, Arokyaraj, Arputharaj, Iyyapan, Babu, C.Kesavam, Madhanagopal, Manoharan, Nachiappan, Kumar, Seenu, Mohan, Shankar, Hari, Chakravarthy, Vinayagam, Sridher, Mahimairaj, Baskaran, Anandhan, Murugan, H.Venkatesan, Katturajan, Ramesh, Ravi, Elumalai, P.Ashok, Sathya, Lakshmanan, Gugan, Kamudhin, Balaji, Viswanathan, Harikrishnan, K.Rajendran, Subramani, Sunil, Kadhiravan, Anbu, Stills Ravi, Vijayan @ Periyarji, Radhakrishnan, Durai, Musthapha, Sivaraj (Metro Water), Kumar, Adhi Shankar, Rajini, Ramesh, Gopi, Perumal, Jothi, Malai Megu, Sahul Ameed, Ravi, Devan, Ramesh and Arumugam, who have been arrested vindictively with election prospects in mind by the respondents.

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2. In the affidavit filed in support of the above Petition, it is stated as follows:-

The State Election Commission announced on 16.09.2006 that elections in respect of local bodies such as Panchayat Unions, District Panchayats, Town Panchyats, Grade III Municipalities, Municipalities and Corporations, will be held on 13.10.2006 and 15.10.2006. In view of the said notification, the election process

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was set in motion. Ever since the ruling Dravida Mennetra Kazhagam Party came to power, ie., since 13.5.2006, the law and order situation in Tamil Nadu is deteriorating and deplorable. The members belonging to the ruling party were given free hand to commit crimes atrocities. Many persons, who were detained under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) were suddenly released to canvas for the ruling party. About 71 persons were arrested by the State Police without following the due process of law. No law permits any detention in such a massive manner that too by lifting the persons during midnight or early morning while they were asleep. The reasons for the arrest and the nature of offences said to have been committed were not informed to the persons arrested. Their family members were also not informed about the arrest. The action of the respondent is in clear violation of the requirements to be followed as declared by the Supreme Court in D.K.Basu's case (1997(1) SCC 416). It is further stated that, when all the above mentioned persons were produced before the Magistrate, they were mechanically remanded, thereby depriving them of their fundamental rights as guaranteed under the Constitution. The learned Magistrate did not even apply her mind and failed to peruse the records including the case diaries so as to satisfy the real necessity to remand the accused persons. Offence under Section 7(1)(a) of Criminal Law Amendment Act, 1932, is not made out, hence, the remand is bad in law. The Bail Applications filed by the detenu are sought to be adjourned beyond the election dates at the instance of the respondents. It is stated that, in view of the fact the respondents have not complied with the directions of the Supreme Court in D.K.Basu's case and of the fact that the learned Magistrate remanded all the persons without applying her mind, having no other remedy, the present petition is preferred invoking the jurisdiction under Article 226 of the Constitution of India.

3. One Mrs.Santha, wife of Ashok, residing at No.61/2, Vethagiri Maistry Street, Chindadripet, Chennai-2, sent a telegram, dated 08.10.2006, through fax to the Hon'ble The Chief Justice stating that her husband Ashok was taken to unknown place by the Inspector of Police, F-2 Chindadirpet police Station, Chennai, on 08.10.2006, and prayed for his release by treating the same as Habeas Corpus Petition. On the orders of the Hon'ble The Chief Justice, the said Telegram was ordered to be treated as Habeas Corpus Petition, viz., HCP No.1018 of 2006, and came to be posted before us for necessary orders.

4. Pursuant to the direction of this Court, learned Additional Public Prosecutor secured instruction from all the respondents.

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5. We heard Mr. S.Jayakumar, learned counsel for the petitioners and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents.

6. After taking us through various details furnished in the affidavit filed in support of HCP No.1009 of 2006 and relevant provisions of the Criminal Procedure Code as well as decisions of this Court and that of the Apex Court, learned counsel for the petitioners submitted that, in view of the fact that the respondents have not followed the various guidelines/procedure laid down by the Supreme Court in D.K.Basu's case and failed to comply with the obligations enumerated in Section 50-A of the Code of Criminal Procedure, the present Habeas Corpus Petition is maintainable. He also contended that, since the personal liberty of the detenus has been infringed upon, irrespective of the fact that all of them have filed Bail Application before the Magistrate concerned, this Court has ample power to issue direction and set them at liberty. He further contended that, inasmuch as the learned Magistrate has not complied with the procedure prescribed in Section 167 of the Code, while ordering the remand, and mechanically accepted the request of the Investigating Officer, the order, remanding all the accused/detenus, cannot be sustained. He also contended that though the respondents-police arrested several thousands of persons, most of them were released and only the detenus shown in the petition are not granted such liberty. According to the counsel, the action of the respondents is violative of Article 14 of the Constitution of India. Finally, he submitted that arrest of the said persons was not intimated to their family members and that they were not provided with the copy of the FIR, remand order, etc.

7. We heard learned Additional Public Prosecutor in respect of the above contentions. He filed the reports submitted by the respective respondents to show the involvement of the persons concerned in the alleged offences. He also produced all the relevant case records such as FIR, statement of various persons, arrest memo, etc., supporting his stand.

8. We perused the documents placed and considered the rival contentions put forth on either side.

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9. In support of his contentions, at the foremost, learned counsel for the petitioner heavily relied on a Division Bench decision of this Court reported in 1990 L.W. (Crl.) 113 (G.K.Moopanar and others vs. State of Tamil Nadu represented by Public Prosecutor) as well as 1983 L.W. (Crl.) 121 (Elumalai v. State of Tamil Nadu and others).

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10. Before going into the factual details of the case on hand, it is useful to refer to the observations/directions issued by the Division Bench in G.K.Moopanar's case (cited supra). The said case law relates to the Writ Petition filed by 7 petitioners, some of them being MLAs and MPs, as Public Interest Litigation on their own behalf and on behalf of 20000 Congress I Party members, who were arrested during the agitation to name a Railway Station after the late Sri.Kamaraj, former Chief Minister of Tamil Nadu. The petition signed by the said seven petitioners was treated as a writ of habeas corpus in view of the fact that all of them were under custody and the matter related to thousands of persons who were under custody. Several contentions have been raised questioning the arrest. The Divsiion Bench, after considering the various earlier decisions of this Court as well as the Apex Court, concluded,

> " 14. .... Whatever it is, it is well established by now that if an impugned order goes to the root of jurisdiction of the authority exercising power under any provision of law, this Court can exercise its jurisdiction under Art.226 and grant necessary relief. However, this Court will be slow in admitting writ petitions wherever there are alternate remedies and only in extra-ordinary cases an aggrieved person can approach this Court under Art.226. It is a judicial discretion which has to be exercised with care and caution bearing in mind that the ultimate object is to render justice to an aggrieved person. ..."

On going through the factual details and after finding that the questions cannot be effectively decided by the Magistrates concerned, the Division Bench arrived at a conclusion that the Writ Petition under Article 226 is maintainable. In paragraph No.15, it was observed as follows:-

> " 15. .... Therefore, in a case like this where the petitioners allege that they have been detained against the procedure established by law and in violation of their fundamental rights to equal justice, certainly a Writ of Habeas Corpus would lie. We must make it clear that normally a Writ of habeas Corpus cannot be granted when a person is committed to jail custody by a competent Court by an order which prima facie does not appear to be without jurisdiction, as observed by some of the decisions of the Supreme Court. But in a deserving case, a Writ of Habeas

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Corpus can be granted for the reasons stated above. ...."

The Division Bench also heavily relied on the earlier decision rendered in Elumalai v. State of Tamil Nadu and others (cited supra). In respect of passing orders of remand by the Magistrates, the Division Bench has observed,

" 16. ... Therefore, it follows that a remand by a Magistrate is not an automatic one and sufficient grounds must exist for the Magistrates to exercise their powers of remand. That is the reason why it is required that a copy of the entries in the diary should be forwarded to the Magistrates alone with the arrested persons. ...."

Insofar as the role of Public Prosecutor, the Bench, in para No.22 of the decision, observed thus,

" 22. ... Of course, whenever a Public Prosecutor appears in such matters, he is certainly bound to satisfy himself that there is justification to seek such an order of remand to judicial custody and assist the court. This duty is already cast on him under law, and therefore, it does not need repetition. ....."

After giving appropriate directions, the Bench, at the penultimate paragraph, concluded as follows:-

" 26. ... It is entirely for the learned Magistrates to decide about the necessity to remand and if so to what period? We do not want to express any opinion in this regard since no particulars are available before us. ..."

11. Learned counsel appearing for the petitioner also brought to our notice the direction given in Elumalai v. State of Tamil Nadu and another, particularly in para No.43(1), which reads as under:-

" 43. In view of all the above discussions, we make the following propositions:

(1) S.167(2) of the Code would apply to arrests made under S.41(1) and in exceptional circumstances, to arrests made under S.151(1). But the Judicial Magistrates, while remanding or passing extensions of remands, should be very watchful to see that the liberty of a citizen is

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not violated by the police arbitrarily and unreasonably."

12. Since the learned counsel strenuously contended that there was violation of the relevant provision, viz., Section.50-A of the Code, it is useful to refer to the same,

> " 50-A. Obligation of person making arrest to inform about the arrest, etc., to a nominated person. -
>
> (1) Every police Officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.
>
> (2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.
>
> (3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.
>
> (4) It shall be the duty of the Magistrate whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section(3) have been complied with in respect of such arrested person."

He also made reference to Sec.167 of the Code which provides the procedure when investigation cannot be completed in twenty-four hours.

13. The conclusion arrived by the earlier Benches in G.K.Moopanar's case as well as Elumali's case makes it clear that, irrespective of the alternative remedy being available, the affected persons can approach this Court by way of Petition under Article 226 of the Constitution of India. We are in entire agreement with the said view. There is no dispute about the said proposition.

14. The next aspect to be considered is as to whether the learned Magistrate is justified in ordering remand of all the persons.

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Though learned counsel for the petitioner vehemently contended that the learned Magistrate has not applied her mind before passing the order of remand, admittedly, no such order is available before us. The learned counsel has placed only a draft order said to have been passed by the learned Magistrate. It is not in dispute that, as per the provisions of the Code of Criminal Procedure and as explained by the earlier Division Benches, the Magistrate concerned is duty bound to satisfy himself/herself before accepting the request of the Investigating Officer for ordering remand. In the absence of required particulars, we are of the view that the said question cannot be gone into by this Court at this stage.

15. To counter the submission of the learned counsel that the respondents have not followed the mandatory directions of the Supreme Court in D.K.Basu's case and Section 50-A of the Code, learned Additional Public Prosecutor pressed into service the report filed by respondents 3 to 17 and also placed the case records relating to the persons shown in the HCPs. Learned Additional Public Prosecutor, by drawing our attention to the factual details stated in the Report, vehemently contended that the persons shown in the petitions are not innocents, according to him, most of them involved in several previous offences and cases relating thereto are still pending. He also contended that some of them were detained as 'Goondas' under Tamil Nadu Act 14/1982.

16. Mr.S.Jayakumar, learned counsel appearing for the petitioners strenuously objected with reference to the statement of the learned Additional Public Prosecutor and also brought to our notice that there is no reliable material to accept the claim of the Additional Public Prosecutor. Though Report is available from all the respondents, for our satisfaction, we verified the report filed by the 5th respondent/Inspector of Police, R2 Kodambakkam Police Station, Chennai. It relates to the case in Crime No.502 of 2006 for the offence under Sections 151 Cr.P.C. Read with 7(1)(1) of the Criminal Law Amendment Act, the date of occurrence being 06.10.2006. The accused arrayed are, Arokiyaraj, Arputharaj, Iyyappan, Ravi, Nithiya, Babu and Sakthivel. According to the 5th respondent, all of them were arrested in connection with the aforesaid Crime Number on 06.10.2006 and produced before the XVII Metropolitan Magistrate, Saidapet, Chennai, who remanded them to judicial custody. All the accused are now confined in Central Prison, Chennai. The Officer has given details relating to the involvement of the detenu in other cases. We are not inclined to refer to all the details, however, it is clear that the accused persons in Crime No.502 of 2006 involved in other offences and that cases relating to the same are under investigation. Further, some of them have been detained under Tamil Nadu Act 14 of 1982. According to the report, one of the accused shown therein by name Sakthivel is a history-sheeted rowdy and he was detained under Act 14/82 during 2002 and 2005.

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17. We make it clear that it is not our endeavour to certify that the statement made by the respondents are acceptable, likewise, it is not possible for us to arrive at a definite conclusion that all the persons involved/shown as detenus in this Petition have not played any role in the commission of any offence. The particulars reveal that these persons cannot be treated on par with others. In such circumstances, we are of the view that the argument relating to discrimination or violation of Article 14 cannot be sustained.

18. Though learned counsel appearing for the petitioner submitted that the persons concerned were not provided with relevant materials such as FIR, remand order, etc., as provided in the statute, learned Additional Public Prosecutor, by placing the respective records, submitted that, in respect of the arrest of all the persons concerned in these Petitions, either the family members or friends of the accused were intimated immediately after the arrest. Here again, in order to satisfy ourselves, we verified the records relating to Crime No.502/06, R-2 Kodambakkam Police Station, Chennai-24. It shows that the arrest of accused Arokyaraj was intimated to one A.D. Raja, S/o.Dharmalingam, residing at No.129, 8th Street, Kamarajar Colony, Kodambkamm, Chennai-24. It is the claim of the Additional Public Prosecutor that records in respect of others are also available.

19. The above discussion and the materials placed show that the persons shown as detenus in these petitions were arrested for various offences, subsequently produced before the learned Magistrate and, on the orders of the Magistrate, all of them were remanded to judicial custody. We have already expressed that fair copy of the remand order is not available before us. If the order of the learned Magistrate is contrary to the propositions enunciated by the Supreme Court or violative of the provisions of the Code of Criminal Procedure, the aggrieved persons are free to challenge the same before appropriate forum by way of separate proceedings.

20. We are satisfied that, at this juncture, there is no valid ground for interference by way of invoking the jurisdiction of this Court under Article 226. Considering the urgency and the statement made by the learned counsel for the petitioners that most of the persons shown in the HCPs are going to act as agents for the candidates contesting in the local body elections, they are free to approach the learned Magistrate to advance the hearing of their bail applications.

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With the above observations, these Petitions are dismissed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Director General of Police, Kamarajar Salai, Chennai - 600 004.

2. The Commissioner of Police, Greater Chennai, Egmore, Chennai - 600 008.

3. The Inspector of Police, J4-Kotturpuram Police Station, Chennai.

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17.The Inspector of Police, J3-Guindy Police Station, Chennai.

18. The Inspector of Police, F2 Chintadripet Police Station, Chennai.

19. The Public Prosecutor, High Court, Madras

20. The XVII Metropolitan Magistrate, Saidapet, Chennai.

21. Do Thro' The Chief Metropolitan Magistrate, Egmore Chennai 8.

22. The Superintendent, Central Prison, Chennai.

+ 1 cc to Mr. S. Jayakumar, Advocate SR No. 47410

AKM(CO)
SR/11.10.2006

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